

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

A1903779

CITY OF CINCINNATI *ex rel.*
THOMAS E. BRINKMAN, JR.,
% Curt C. Hartman, Legal Counsel
The Law Firm of Curt C. Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230,

Relator,

v.

CITY OF CINCINNATI
% Paul Boggs Muething
Cincinnati City Solicitor
801 Plum Street, Room 214
Cincinnati, OH 45202,

and

PAULA BOGGS MUETHING *in her official*
capacity as CINCINNATI CITY SOLICITOR
801 Plum Street, Room 214
Cincinnati, OH 45202,

Respondents.

Case No. _____

Judge _____

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

COPY FILED
CLERK OF COURTS
HAMILTON COUNTY

AUG 13 2019

AFTAB PUREVAL
COMMON PLEAS COURTS

Now comes the CITY OF CINCINNATI, by and through Relator THOMAS E. BRINKMAN, JR., as a taxpayer and resident of the CITY OF CINCINNATI, and for its Complaint brought pursuant to R.C. 733.56 *et seq.* alleges as follows:

INTRODUCTION

Relator THOMAS BRINKMAN, as a taxpayer and resident of the CITY OF CINCINNATI, and on relation to the CITY OF CINCINNATI, hereby seeks (i) the issuance of an injunction in order to restrain the abuse of corporate power by PAULA BOGGS MUETHING, in her capacity as the Cincinnati City Solicitor, whereby she authorized the filing

and prosecution of a lawsuit on behalf of and in the name of the CITY OF CINCINNATI and currently pending in the Hamilton County Common Pleas Court, styled *City of Cincinnati v. State of Ohio*, with Case No. A-19-02786, when the filing of such lawsuit on behalf of the municipal corporation was not authorized by the Cincinnati City Council; and (ii) a declaratory judgment decreeing that the Cincinnati City Solicitor does not possess *carte blanche* authority to file or commence any and all civil actions on behalf of and in the name of the CITY OF CINCINNATI (or in the official capacity of an official of the CITY OF CINCINNATI) but that the authority for filing and prosecuting any civil action on behalf of and in the name of the CITY OF CINCINNATI (or in the official capacity of an official of the CITY OF CINCINNATI) must be given by the Cincinnati City Council.

PARTIES

1. Relator THOMAS E. BRINKMAN, JR., is a resident and taxpayer of and within the CITY OF CINCINNATI.
2. Respondent CITY OF CINCINNATI is a municipal corporation in the State of Ohio and, as such, is a body corporate and politic, capable of being sued and organized and existing under Chapter 715 of the Ohio Revised Code and the Cincinnati City Charter (pursuant to Article XVIII of the Ohio Constitution).
3. Respondent PAULA BOGGS MUETHING is the City Solicitor of the CITY OF CINCINNATI and is sued in her official capacity.

STATEMENT OF FACTS

4. On November 29, 2006, the 126th Ohio General Assembly passed Sub. H.B. 347.
5. While then-Governor Bob Taft vetoed Sub. H.B. 347, the Ohio House of Representatives and the Ohio State Senate overrode the veto.

6. Sub. H.B. 347 became effective on March 14, 2007.
7. In passing Sub. H.B. 347, the 126th Ohio General Assembly enacted Ohio Rev. Code § 9.68 as a new statutory provision.
8. In enacting Ohio Rev. Code § 9.68, the Ohio General Assembly sought to provide statutory protection of individual's rights under the Second Amendment to the United States Constitution.
9. In pertinent part, Ohio Rev. Code § 9.68 provides:

The individual right to keep and bear arms, being a fundamental individual right that predates the United States Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition. Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.
10. Generally speaking, Ohio Rev. Code § 9.68 prohibits any local government in the State of Ohio from passing any ordinance or similar enactment that restricts or otherwise attempts to regulate the ownership, possession, purchase, sale, transfer, transportation, storage or keeping of any firearm, part of a firearm, its components, and its ammunition.
11. Notwithstanding the prohibition in Ohio Rev. Code § 9.68, the Cincinnati City Council adopted, on May 9, 2018, and as an emergency measure, Ordinance No. 91-2018.
12. The Cincinnati City Council is the legislative authority for the CITY OF CINCINNATI.
13. A true and accurate copy of Ordinance No. 91-2018, as obtained from the website of the CITY OF CINCINNATI, is attached hereto as Exhibit A.

14. Generally speaking, Ordinance No. 91-2018 sought to restrict or regulate the ownership, possession, purchase, sale, transfer, transportation, storage or keeping of the components of a firearm, through the enactment of Cincinnati Municipal Code § 9.68.

15. Accordingly, Ordinance No. 91-2018 violated Ohio Rev. Code § 9.68.

16. In response to the passage of Ordinance No. 91-2018 by the Cincinnati City Council, the Buckeye Firearms Foundation, Inc., Ohioans for Concealed Carry, and Jordan Telting brought a taxpayer action on June 21, 2018, against the CITY OF CINCINNATI and PAULA BOGGS MUETHING in the Hamilton County Common Pleas Court, in a case styled *Buckeye Firearms Foundation, Inc. v. City of Cincinnati*, and assigned Case No. A-18-03098 (referred to herein as the “*Bump Stock Ban Lawsuit*”).

17. Generally speaking, the *Bump Stock Ban Lawsuit* challenged the validity of Cincinnati Municipal Code § 910-24 (as enacted by Ordinance No. 91-2018).

18. Ultimately, on February 11, 2019, the Hamilton County Common Pleas Court in the *Bump Stock Ban Lawsuit* granted summary judgment in favor of the plaintiffs therein, concluding that Cincinnati Municipal Code § 910-24 “does restrict the ability of the people of Ohio from exercising their right to keep and bear arms” and, thus, the Court permanently enjoined the CITY OF CINCINNATI and PAULA BOGGS MUETHING from enforcing Cincinnati Municipal Code § 910-24.

19. A true and accurate copy of the *Entry Granting Plaintiff's Motion for Summary Judgment* issued on February 11, 2019, in the *Bump Stock Ban Lawsuit*, as obtained from the website of the Hamilton County Clerk of Court, is attached hereto as Exhibit B.

20. On June 6, 2019, the CITY OF CINCINNATI, at the behest of PAULA BOGGS MUETHING as Cincinnati City Solicitor, filed a lawsuit against the State of Ohio, in the

Hamilton County Common Pleas Court, in a case styled *City of Cincinnati v. State of Ohio*, and assigned Case No. A-19-02786 (referred to herein as the “*RC 9.68 Lawsuit*”).

21. With the *RC 9.68 Lawsuit*, the CITY OF CINCINNATI challenges the constitutionality of certain amendments to Ohio Rev. Code § 9.68.

22. At no time has the Cincinnati City Council authorized or directed PAULA BOGGS MUETHING as the Cincinnati City Solicitor to file the *RC 9.68 Lawsuit* by and in the name of the CITY OF CINCINNATI or as an official-capacity lawsuit by and in the name of a official with the CITY OF CINCINNATI.

23. As a municipal corporation, CITY OF CINCINNATI is a body politic and corporate, capable of suing and being sued. Ohio Rev. Code § 715.01.

24. An official-capacity lawsuit brought by and in the name of a governmental official is a lawsuit by the official’s office and, thus, is treated as an action by the governmental entity itself. *See State ex rel. Estate of Miles v. Village of Piketon*, 121 Ohio St.3d 231, 903 N.E.2d 311, 2009-Ohio-786 ¶23.

25. Instead, based upon information and belief, PAUL BOGGS MUETHING, in her capacity as Cincinnati City Solicitor, claims the *carte blanche* authority to file and prosecute any and all civil actions on behalf of and in the name of the CITY OF CINCINNATI or as an official-capacity lawsuit on behalf of a governmental official of the CITY OF CINCINNATI.

26. While Article IV, Section 5 of the Cincinnati City Charter provides that the Cincinnati City Solicitor “shall represent the city in all proceedings in court”, said responsibility does not grant the Cincinnati City Solicitor *carte blanche* power and authority to unilaterally commence legal proceedings in court on behalf of the CITY OF CINCINNATI.

27. Instead, the authority to commence a legal proceeding by and in the name of the CITY OF CINCINNATI as a municipal corporation, or an official-capacity lawsuit, must be authorized by the Cincinnati City Council.

28. In fact, Ohio Rev. Code § 715.03 which expressly provides that the “legislative authority of [a] municipal corporation[] may provide by ordinance or resolution for the exercise and enforcement” of the corporate powers, including the power to sue.

29. The authority to exercise the corporate power of a municipality to sue is inherent in the legislative branch, *i.e.*, the Cincinnati City Council, which may provide, by ordinance or resolution, the authority for an executive branch officer to direct or authorize the bringing of an action on behalf of the corporation. *See* Cincinnati City Charter, Article II, Section 1 (“[a]ll legislative powers of the city shall be vested, subject to the terms of this charter and of the constitution of the state of Ohio, in the council”).

30. There are numerous provisions within the Cincinnati Municipal Code wherein the Cincinnati City Council expressly authorized officers of the municipal corporation, including the Cincinnati City Solicitor, to bring actions on behalf of the municipal corporation without the need for further authorization.

31. Excerpts of numerous provisions within the Cincinnati Municipal Code wherein the Cincinnati City Council expressly authorized the Cincinnati City Solicitor to commence a civil action in the name of the CITY OF CINCINNATI is attached hereto as Exhibit C.

32. With respect to the *RC 9.68 Lawsuit*, no legislative enactment or resolution by the

33. Because the exercise of the corporate powers of suing on behalf of the CITY OF CINCINNATI can only be undertaken by and with the authority of the legislative body, *i.e.*, the Cincinnati City Council, and the Cincinnati City Council never authorized the filing of the *RC*

9.68 Lawsuit, the filing of the *RC 9.68 Lawsuit* by and in the name of the CITY OF CINCINNATI by PAULA BOGGS MUETHING and the Office of the City Solicitor of the City of Cincinnati constitutes an abuse of corporate powers.

34. In light of the abuse of corporate powers of the CITY OF CINCINNATI, THOMAS BRINKMAN tendered a written demand (the "*Taxpayer Demand Letter*") to PAULA BOGGS MUETHING, in her capacity as Cincinnati City Solicitor.

35. A true and accurate copy of the *Taxpayer Demand Letter* is attached hereto as Exhibit D.

36. The *Taxpayer Demand Letter* was hand delivered to the Office of the City Solicitor for the City of Cincinnati on July 19, 2019.

37. After setting forth the abuse of corporate power engaged in by PAULA BOGGS MUETHING filing of, authorizing the filing of, or directing the filing of the *RC 9.68 Lawsuit* on behalf of and in the name of the CITY OF CINCINNATI, THOMAS BRINKMAN formally requested, pursuant to Ohio Rev. Code 733.56 *et seq.*, that PAULA BOGGS MUETHING, "as City Solicitor for the City of Cincinnati, make application, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers undertaken in the filing and prosecution of" the *RC 9.68 Lawsuit*.

38. On August 7, 2019, PAUL BOGGS MUETHING responded (the "*Response Letter*") to THOMAS BRINKMAN and to the *Taxpayer Demand Letter*.

39. A true and accurate copy of the *Response Letter* received from the Office of the Cincinnati City Solicitor is attached hereto as Exhibit E.

40. Within the *Response Letter*, PAUL BOGGS MUETHING claimed that, as the Cincinnati City Solicitor, she "has the power to initiate, dismiss, or settle litigation on behalf of

the City of Cincinnati” and, thus, her decision to file the *RC 9.68 Lawsuit* was a proper exercise of municipal power such that she would not bring the civil action requested in the *Taxpayer Demand Letter* to restrain the on-going abuse of the corporate power of the CITY OF CINCINNATI.

41. Contrary to the contention in the *Response Letter*, PAUL BOGGS MUETHING, in her capacity as Cincinnati City Solicitor, does not have the *carte blanche* authority to file whatever legal actions she desires by and in the name of the CITY OF CINCINNATI or as an official-capacity lawsuit on behalf of a governmental official of the CITY OF CINCINNATI.

FIRST CAUSE OF ACTION (Injunction)

42. THOMAS BRINKMAN incorporates by reference all of the foregoing paragraphs as if fully restated herein.

43. As the filing and continued prosecution of the *RC 9.68 Lawsuit* was not authorized by the Cincinnati City Council, the filing and continued prosecution of the *RC 9.68 Lawsuit* constitute an abuse of the corporate powers of the CITY OF CINCINNATI.

44. Pursuant to Ohio Rev. Code § 733.56 *et seq.* and in light of the refusal of PAULA BOGGS MUETHING, in her capacity as Cincinnati City Solicitor, to bring an action in the name of the CITY OF CINCINNATI and to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers, THOMAS BRINKMAN, having made a written demand upon PAULS BOGGS MUETHING to bring such an action, has standing to bring and prosecute this taxpayer action by and in the name of the CITY OF CINCINNATI.

45. Relator is entitled to the immediate issuance of an injunction restraining the CITY OF CINCINNATI and PAUL BOGGS MUETHING, in her capacity as the Cincinnati City Solicitor, or those acting at their behest or direction, from continuing to abuse the corporate

powers of the CITY OF CINCINNATI through, *inter alia*, the continued prosecution of the RC 9.68 Lawsuit.

46. Relator is entitled to the issuance of an injunction against the CITY OF CINCINNATI and PAULA BOGGS MUETHING, in her capacity as the Cincinnati City Solicitor, or those acting at their behest or direction, to estop and remedy all actions taken as a result of the abuse of corporate powers occurring through the filing and prosecution of the RC 9.68 Lawsuit.

SECOND CAUSE OF ACTION (Declaratory Judgment)

47. THOMAS BRINKMAN incorporates by reference all of the foregoing paragraphs as if fully restated herein.

48. A real and justiciable dispute exists between the parties concerning the scope and authority of the Cincinnati City Solicitor to authorize or direct the filing of civil actions on behalf of and in the name of the CITY OF CINCINNATI (or in the official capacity of an official of the CITY OF CINCINNATI) when such authority is not expressly given and authorized in the Cincinnati Municipal Code. *See Exhibit C attached hereto* (setting forth numerous provisions within the Cincinnati Municipal Code wherein the Cincinnati City Council expressly authorized the Cincinnati City Solicitor to commence a civil action in the name of the CITY OF CINCINNATI).

49. Specifically, THOMAS BRINKMAN, on relation to the CITY OF CINCINNATI, is entitled to the issuance of a declaratory judgment that, at a minimum, decrees that the Cincinnati City Solicitor does not possess *carte blanche* authority to file or commence any and all civil actions on behalf of and in the name of the CITY OF CINCINNATI (or in the official capacity of an official of the CITY OF CINCINNATI) but that the authority for filing and

prosecuting any civil action on behalf of and in the name of the CITY OF CINCINNATI (or in the official capacity of an official of the CITY OF CINCINNATI) must be given by the Cincinnati City Council.

WHEREFORE, Relator THOMAS BRINKMAN, on relation to and on behalf of the CITY OF CINCINNATI, prays for the entry of judgment in his favor and against Respondents CITY OF CINCINNATI and PAULA BOGGS MUETHING, granting the injunctive relief and declaratory judgment sought in the preceding paragraphs, together with court costs, attorney fees, as well as such other relief to which Relator may be entitled in law or in equity.

Respectfully submitted,



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Attorneys for Relator

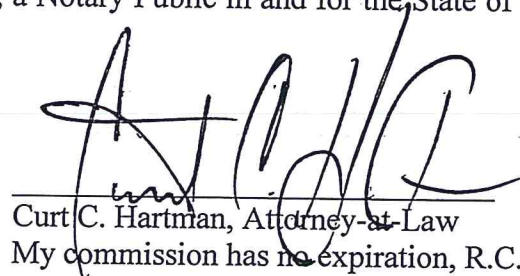
VERIFICATION

State of Ohio, County of Hamilton) ss:

Now comes THOMAS BRINKMAN, having been duly cautioned and sworn, and declares that he has reviewed the foregoing complaint and that the factual allegations therein are true and accurate.


Thomas E. Brinkman

Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on this the 13th day of August 2019.


Curt C. Hartman, Attorney-at-Law
My commission has no expiration, R.C. 147.03

EMERGENCY

City of Cincinnati

AEP *BM*

An Ordinance No. 91 - 2018

ORDAINING new Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," of Chapter 910, "Public Order," of the Cincinnati Municipal Code to implement appropriate and necessary municipal regulations on firearm accessories or attachments.

WHEREAS, trigger activators, such as bump stocks and trigger cranks, are devices designed to dramatically increase the firing rate of otherwise legal weapons to the firing speed of unlawful weapons; and

WHEREAS, the use of bump stocks allowed a single gunman to kill nearly sixty innocent people and injure hundreds more on October 1, 2017 in Las Vegas, Nevada in the deadliest mass shooting in American history; and

WHEREAS, City Council recognizes that mass shootings pose a serious threat to the health, safety, and security of the citizens of Cincinnati; and

WHEREAS, Ohio Revised Code § 9.68 prohibits municipalities from regulating the ownership, possession, or sale of firearms, their components, and their ammunition, but does not restrict municipal regulations on firearm accessories or attachments; and

WHEREAS, trigger activators are not firearm components or parts that are essential to the function of a weapon, but rather are optional aftermarket accessories that may be purchased to modify the operation of a firearm; and

WHEREAS, City Council finds it necessary to take appropriate action to attempt to prevent a large-scale act of gun violence like the one which took place in Las Vegas from occurring in Cincinnati by any use of trigger activators which are capable of inflicting maximum harm on civilian populations; and

WHEREAS, upon passage of this ordinance, the City Manager and the Cincinnati Police Department shall be authorized to arrange for a safe and legal means of disposal of such trigger activators for any person currently possessing a trigger activator within City limits; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," of Chapter 910, "Public Order," of the Cincinnati Municipal Code ("CMC") is hereby ordained to read as follows:

Exhibit A

Sec. 910-24. Possession, Use, and Sale of Trigger Activators Prohibited.

- (a) "Trigger Activator" is hereby defined as a device designed or functioning to accelerate the rate of fire of a firearm to approximate an automatic weapon, including bump stocks, trigger cranks, slide fire devices, and other similar accessories.
- (b) It shall be unlawful for any person to own, possess, sell, or use a trigger activator, as defined herein, within the municipal limits of Cincinnati.
- (c) Whoever violates this section is guilty of possession of a trigger activator, a misdemeanor of the first degree.

Section 2. That the City Manager is hereby authorized to issue notice to the public regarding the new CMC Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," and arrange for a safe and legal means of disposal for any person possessing a trigger activator in violation of the terms of CMC 910-24.

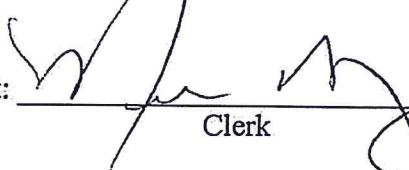
Section 3. That the appropriate City officials are hereby authorized to take all necessary action to carry out the provisions of Sections 1 and 2 herein.

Section 4. That the provisions of CMC Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited," shall take effect 60 days after the effective date of this ordinance.


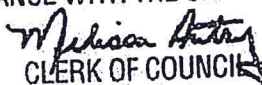
Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to allow the City Administration to initiate appropriate preparations for implementation of Section 910-24, "Possession, Use, and Sale of Trigger Activators Prohibited."

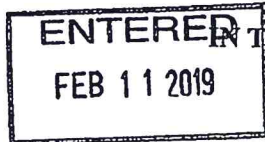
Passed: May 9, 2018

Attest:


Clerk

I HEREBY CERTIFY THAT ORDINANCE No. 910-2018
WAS PUBLISHED IN THE CITY BULLETIN
IN ACCORDANCE WITH THE CHARTER ON 5-22-2018


John Cranley, Mayor

CLERK OF COUNCIL



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

BUCKEYE FIREARMS
FOUNDATION, et al.
Plaintiff,

vs.

THE CITY OF CINCINNATI, et al.,
Defendants.

: CASE NO. A1803098
:
:
: JUDGE ROBERT P. RUEHLMAN
:
: ENTRY GRANTING PLAINTIFF'S
: MOTION FOR SUMMARY JUDGMENT
:
:
:

This matter is before the Court on Plaintiff's motion for summary judgment. The Court, having read the submitted briefs and in full consideration of the arguments finds said motion well taken and **GRANTS** the same.

Summary judgment is appropriate when the moving party shows that 1) no genuine issue of material fact exists; 2) moving party is entitled to judgment as a matter of law; and 3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party. *Harless v. Willis Day Warehouse Co.*, 54 Ohio St. 2d 64 (1970).

First, there are no genuine issues of material fact that exist. Plaintiffs contend that Municipal Code section 910-24 violates Ohio Revised Code section 9.68 which states:

The individual right to keep and bear arms, being a fundamental individual right that predates the United States Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition. Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition.

Exhibit B



... -

This Court finds that the Municipal Code section 910-24 is in direct conflict with Ohio Revised Code section 9.68. While the Ordinance does not expressly refer to trigger activators, it does refer to parts and components of the firearm. Defendants argue that the trigger activators are only "accessories" and do not rise to being considered a component of the firearm. However, this Court finds that accessories can be categorized under the term components and are therefore covered under Ohio Revised Code section 9.68. When an object that affects the use and function of the firearm becomes attached to the firearm it becomes a component. The time at which an item is attached to a firearm does not change the fact that the item becomes a part or component of the firearm. Clearly, trigger activators are components of a firearm and are governed under Ohio Revised Code section 9.68.

Leaving no further genuine issues of material fact, this Court turns to whether the moving party is entitled to judgment as a matter of law and whether reasonable minds can come but to one conclusion. This Court finds that Cincinnati Municipal Code section 910-24 violates Ohio Revised Code section 9.68. Violation of Ohio Revised Code section 9.68 requires that Municipal Code Section 910-24 be permanently enjoined from being enforced. The Supreme Court of Ohio has determined that municipalities do not have the ability to enact ordinances that would restrict the ability of people in Ohio from their right to keep and bear arms, if that restriction conflicts with Ohio Revised Code section 9.68. *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St. 3d 96 (2008). Municipal Code section 910-24 does restrict the ability of the people of Ohio from exercising their right to keep and bear arms. Therefore, Municipal Code section 910-24 is hereby

permanently enjoined from being enforced and Plaintiff's motion for summary judgment is hereby granted.

IT IS SO ORDERED.

Date

JUDGE ROBERT P. RUEHLMAN

**PROVISIONS WITHIN THE CINCINNATI MUNICIPAL CODE WHEREIN
THE CINCINNATI CITY COUNCIL EXPRESSLY AUTHORIZED
THE CINCINNATI CITY SOLICITOR TO COMMENCE A CIVIL ACTION**

THE ADMINISTRATIVE CODE

ARTICLE IX. - DEPARTMENT OF FINANCE

Sec. 13. - Collection of Moneys Due City.

Whenever any person is indebted to the city in any manner, and the duty of collecting and receiving such debt is not specifically imposed upon some other officer by law or ordinance, the city treasurer shall demand and receive the same. When any claim is not collectible by other means the treasurer shall report the same to the city solicitor to be collected by suit or other appropriate action.

Chapter 313 - OUTDOOR ADVERTISING SIGN EXCISE TAX

Sec. 313-19. - Enforcement.

- (a) Upon an assessment [by the treasurer of all deficiencies of tax, interest, and penalties due from any advertising host or responsible party charged with liability for such amounts under this chapter] becoming final and after the expiration of time for all proper appeals, the city solicitor shall, by request of the treasurer on behalf of the city, bring or cause to be brought an action to enforce the payment of the assessment in any court of competent jurisdiction against any party liable for payment.

Chapter 602 - UNSANITARY BUILDINGS AND NUISANCES

Sec. 602-17. - Court Actions.

Whenever the board of health or the director of buildings and inspections certifies to the city solicitor any failure to comply with any such order or notice of vacation, with the request that the city solicitor institute civil proceedings for the enforcement thereof, the city solicitor is hereby authorized to and shall institute any and all proceedings, either legal or equitable, that may be appropriate or necessary for the enforcement of such order or notice and the abatement of the nuisance against which such order or notice was directed; such suits or proceedings to be brought in the name of the city of Cincinnati, and no such suits or proceedings shall be held to exclude any criminal or penal proceedings which may be authorized by this chapter or any of the laws or ordinances in force in this city, or to exempt anyone violating this or such laws or ordinances from any penalty which may be incurred.

Chapter 719 - WIRELESS COMMUNICATIONS FACILITIES IN THE RIGHT OF WAY

Sec. 719-99. - Penalties.

- (b) If any Wireless Communications Facility is erected, constructed, reconstructed, altered, repaired, converted, attached, or maintained in violation of this chapter or of any regulations made pursuant hereto, the proper officer of the city, in addition to other remedies, may institute in the name of the city any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, attachment, or use, to restrain, correct, or abate such violation, to prevent the use of such facility, and/or to prevent any illegal act, conduct, business, or use in or about such facility.

Chapter 729 - WASTE DISPOSAL

Sec. 729-30. - Dumping Prohibited.

- (d) Notwithstanding any other penalty authorized by this section, if the city manager, the city manager's designee or the director of public services ascertains that a person has violated this section, the director of public services may remove the waste and the city solicitor may take any legal action necessary to collect the cost of the removal from the violator.

Chapter 828 - RENTAL AGENCIES

Sec. 828-7. - Action by the Solicitor.

The city solicitor may bring an action to obtain a declaratory judgment that an act or practice violates Section 828-3 of the Cincinnati Municipal Code or to enjoin a rental agency which is violating the section.

Chapter 899 - SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES

Sec. 899-29. - Penalties and Enforcement.

A person who violates any provision of this Chapter 899 is guilty of a Misdemeanor of the First Degree.

The City Solicitor is hereby authorized to institute civil proceedings necessary for the enforcement of this Chapter 899 to restrain or correct violations hereof. Such civil proceedings, including injunction, shall be brought in the name of the city, provided, however, that nothing in this section and no action taken thereunder, shall be held to exclude such criminal proceedings as may be authorized by this code, or any of the laws or ordinances in force in the city or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Chapter 914 - UNLAWFUL DISCRIMINATORY PRACTICES

Sec. 914-11. - Enforcement.

If after 30 calendar days following service of an order to cease and desist the respondent has not eliminated or corrected the unlawful discriminatory practice, the Complaint Officer is authorized to impose a fine of \$100 per day for each day of substantial non-compliance with the provisions of this chapter, but not to exceed a total of \$1,000.

The city manager is authorized to institute through the city solicitor in the name of the City of Cincinnati any appropriate civil enforcement proceedings.

TITLE X - ENVIRONMENTAL CODE

CHAPTER 1001 - AIR QUALITY

Sec. 1001-29. - Citizen Action.

If the city manager, or his or her designee, including HCDES, fails upon written complaint by a Cincinnati resident of violations of Section 1001-5, Air Pollution Nuisances Prohibited, or Section 1001-7, Exceeding Federal or Ohio Air Emission Limitations Prohibited, or any order issued under Section 1001-23, Administrative Order hereof, or 1001-31, Emergency Powers and Injunction, to diligently investigate, and prosecute in accordance with the provisions of Sections 1001-19 through 1001-25 of this chapter, within 60 days of receipt of the complaint, the citizen may commence a civil action in a court of competent jurisdiction against any person who violates, or has violated any provisions of this chapter or order issued hereunder to compel compliance herewith, including injunctive procedures where permitted by law. The citizen shall mail a copy of the complaint to the alleged violator by certified mail, return receipt requested, at the time the complaint is filed. The city shall not be responsible for any of the citizen's costs of litigation including attorney's fees unless the court so orders, where the city is the violator of Section 1001-5 or 1001-7 of this chapter. The solicitor shall have the right to intervene in the name of the city in any such proceedings instituted by a citizen. The court, in issuing any final order in an action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party, whenever the court determines such award is appropriate.

Sec. 1001-31. - Emergency Powers and Injunction.

Upon receipt of information that a violation or threatened violation of this chapter may imminently and substantially endanger the health, safety or welfare of the residents of Cincinnati or the environment, the city solicitor is hereby authorized and empowered to institute civil proceedings at any time in the name of the city to enjoin any person from causing or contributing to any such violation or threatened violation without first exhausting any other remedy.

The city solicitor is authorized to institute civil proceedings at any time in the name of the city to enjoin air pollution nuisances or emissions in violation of Section 1001-5 or 1001-7 hereof.

Chapter 1021 - JUNK FACILITY

Sec. 1021-31. - Emergency Powers and Injunction.

Upon receipt of information that a violation or threatened violation of this chapter may imminently and substantially endanger the health, safety or welfare for the residents of Cincinnati or the environment, the city solicitor is hereby authorized and empowered to institute civil proceedings at any time in the name of the city to enjoin any person from causing or contributing to any such violation or threatened violation without first exhausting any other remedy.

Upon request of the health commissioner, the city solicitor is authorized to institute civil proceedings at any time in the name of the city to enjoin public nuisances or violations of this chapter

Chapter 1101 - ADMINISTRATION

Sec. 1101-64. - Recovering Total Cost of Correcting Hazardous Condition of Building and/or Abating Nuisance.

(a)(3) The city solicitor may commence a civil action to recover the total costs, including from the owner or person in control of the benefitted property at the time the costs were incurred.

TITLE XI - CINCINNATI BUILDING CODE

Chapter 1107 - ELEVATOR AND CONVEYER EQUIPMENT

Sec. 1107-13. - Enforcement.

(a) The director is authorized to issue civil and criminal orders and citations to enforce the regulations of this Chapter in addition to any other enforcement authority granted to the director under this Chapter and the CBC. The director may also petition the City Solicitor to commence an appropriate legal action against any person found to be in violation of the provisions of this Chapter.

TITLE XII - CINCINNATI FIRE PREVENTION CODE

Chapter 1201 - ADMINISTRATION

Sec. 1201-41. - Civil Proceedings.

(A) Whenever the fire chief is satisfied that any provision the fire chief is charged to enforce, or any law in force in the city applicable to the same subject matter, has been violated or is about to be violated in any respect, or that any order or direction made in pursuance of the enforcement of this code has not been complied with, or is being disregarded, and whenever the fire chief is satisfied that civil proceedings are necessary for the enforcement of this code or laws, to restrain or correct the violations thereof, or to prevent the occupancy or use of any building or other structure that is being constructed, altered or maintained in violation of this code, the fire chief shall apply to the city solicitor, who is hereby authorized to institute civil proceedings. Such civil proceedings shall be brought in the name of the city, provided, however, that nothing in this section and no action taken thereunder, shall be held to exclude such criminal proceedings as may be authorized by this code, or any of the laws or ordinances in force in the city or to exempt anyone violating this code or any part of the laws from any penalty which may be incurred.

(B) Nothing in this code shall be construed to affect any act done or committed in violation of any former ordinance relating to the same subject, or any suit or proceeding now pending in court for the violation of the provisions of any former ordinance, or any cause or causes of action accrued or existing under such ordinance, but all proceedings or prosecutions now pending shall be conducted to final determination irrespective of this code.

Chapter 1247 - TOXIC AND HAZARDOUS SUBSTANCES - RIGHT TO KNOW

Sec. 1247-23. - Remedies Available to City Solicitor.

The city solicitor, or his or her designee, may institute appropriate legal action, either civil or criminal as authorized herein, or as may be otherwise available and appropriate either at law or in equity, which may, in the judgment of the city solicitor or his or her designee, be necessary for the enforcement of any order or orders issued pursuant to this chapter or the abatement of any nuisance or hazard against which such order was directed. Any such suits or proceedings are to be brought in the name of the city of Cincinnati and no such suits or proceedings shall be held to exclude any criminal or penal remedies which may be authorized by this chapter or any of the laws or ordinances in force or effect in the city of Cincinnati, or to exempt any violators of this or any other laws or ordinances from any penalty or penalties as may be prescribed. This section shall not be construed to eliminate, abridge or detract from any remedies either at law or in equity which any employee or other individual may have arising out of any breach of violation of the provisions of this chapter.

TITLE XIV - ZONING CODE OF THE CITY OF CINCINNATI

Chapter 1451 - ENFORCEMENT

§ 1451-07. - Remedies.

Whenever the Director of Buildings and Inspections or any other officer charged with the enforcement of the Cincinnati Zoning Code is satisfied that any provision of this Code has been violated or is about to be violated in any respect, or that any order or direction made for enforcement of this Code has not been complied with, the Director shall act as follows:

(a) If the director is satisfied that civil proceedings are necessary for the enforcement of the code, the director shall apply to the City Solicitor, who is authorized to institute civil proceedings.

(b) In case any building or structure is or is intended to be erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is or is intended to be used, in violation of this Code, the City Solicitor, in addition to the remedies herein provided for, shall institute any appropriate action in law or equity to prevent such unlawful act, or to restrain, correct or abate such violation.

The actions authorized by this section are in addition to those authorized by § 1451-05 and § 1451-09.

§ 1451-13. - Enforcement of Historic Conservation Regulations.

The City Solicitor is empowered to bring such civil action, whether equitable or legal, as may be necessary to enforce the provisions of Chapter 1435, Historic Conservation, and § 1451-11, Historic Conservation Prohibitions.

A person who causes, whether by neglect or willful action or inaction, an alteration of or environmental change or demolition affecting a historic landmark or a historic site within a Historic District in violation of this chapter shall be required to restore the structure or property to its appearance as the Historic Conservation Board may approve. The City Solicitor has the duty to bring actions to enforce this section. This civil remedy is in addition to and not in lieu of a criminal prosecution and penalty or civil prosecution and penalty pursuant to Title XV, Code Compliance and Hearings, of the Cincinnati Municipal Code.

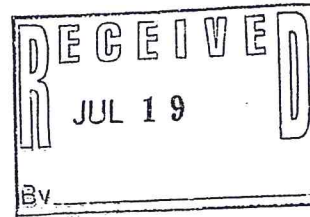
Whoever violates any provision of Chapter 1435, Historic Conservation, § 1451-11, Historic Conservation Prohibitions, and § 1451-13, Enforcement of Historic Conservation Regulations, or fails to conform to any provision thereof or fails to obey any lawful order of the Director of City Planning and Buildings issued in pursuance thereof, is guilty of a misdemeanor of the first degree. Each day's continuation of a violation or failure to comply is a separate offense. As an alternative to criminal prosecution, the Director may cite a person who violates any provision of Chapter 1435, Historic Conservation, § 1451-11, Historic Conservation Prohibitions, or § 1451-13, Enforcement of Historic Conservation Regulations, or fails to conform to any provision thereof or fails to obey any lawful order of the Director issued in pursuance thereof, for a civil offense pursuant to Title XV, Code Compliance and Hearings, of the Cincinnati Municipal Code.

TITLE XV - CODE COMPLIANCE AND HEARINGS

Sec. 1501-27. - Civil Proceedings.

Whenever an officer charged with the enforcement of the Cincinnati Municipal Code is satisfied that a provision that officer is charged to enforce, or a law in force in the city applicable to the same subject matter, has been violated or is about to be violated, or that an order or direction made in pursuance of the enforcement of this Code has not been complied with, or is being disregarded, and whenever that officer is satisfied that civil proceedings are necessary for the enforcement of the Cincinnati Municipal Code or laws, to restrain or correct the violations thereof, that officer may apply to the city solicitor, who is authorized to institute civil proceedings. Civil proceedings may be brought in the name of the city, and may include claims for injunction, mandatory relief, restraining orders, damages, the appointment of a receiver, and such other relief as may be allowed in law or equity. Institution of civil proceedings does not exclude criminal proceedings as may be authorized by the Cincinnati Municipal Code or charging a person with a civil offense as authorized by this Title.

Thomas E. Brinkman, Jr.
3215 Hardisty Avenue
Cincinnati, Ohio 45208



July 19, 2019

VIA HAND DELIVERY

Ms. Paula Boggs Muething
Cincinnati City Solicitor
801 Plum Street, Room 214
Cincinnati, OH 45202

Re: Request for Initiation of Civil Action on Behalf of Municipal Corporation

Ms. Muething:

Pursuant to Ohio Revised Code §§ 733.56 to 733.61, I hereby request that you, as Cincinnati City Solicitor, make application in the name of the municipal corporation to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers.

This demand arises from the recent commencement of a lawsuit on behalf of the City of Cincinnati and currently pending in the Hamilton County Common Pleas Court, styled *City of Cincinnati v. State of Ohio*, with Case No. A-19-02786. Generally speaking, the subject lawsuit involves a state constitutional challenge to the enactment of Ohio Revised Code § 9.68. Based upon the facts and law, proper and legal authorization by and on behalf of the municipal corporation had not been given to enable you, as an officer of the corporation, or your office to file the subject lawsuit by and in the name of the municipal corporation.

As a municipal corporation, the City of Cincinnati is a body politic and corporate, capable of suing and being sued. Ohio Rev. Code § 715.01. And while Article IV, Section 5 of the Cincinnati City Charter provides that you, as the City Solicitor "shall represent the city in all proceedings in court", said responsibility does not empower you to unilaterally commence legal proceedings in court on behalf of the municipal corporation without legal authority. Instead, the authority to commence a legal proceeding by and in the name of the City of Cincinnati must be authorized by the Cincinnati City Council:

The solicitor shall perform all other duties now or hereafter imposed upon city solicitors by the laws of the state, unless otherwise provided by ordinance of the council, and such other duties as the council may impose upon the solicitor consistent with the office of city solicitor.

And this is consistent with Ohio Rev. Code § 715.03 which expressly provides that the "legislative authority of [a] municipal corporation] may provide by ordinance or resolution for the exercise and enforcement" of the corporate powers, including the power to sue contained in Ohio Rev. Code § 715.01.

Exhibit D

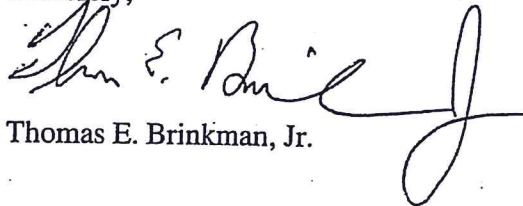
Furthermore, the authority of a municipal corporation to sue is inherent in the legislative branch, *i.e.*, the Cincinnati City Council, which may provide, by ordinance or resolution, the authority for an executive branch officer to direct or authorize the bringing of an action on behalf of the corporation. *See Cincinnati City Charter, Article II, Section 1* (“[a]ll legislative powers of the city shall be vested, subject to the terms of this charter and of the constitution of the state of Ohio, in the council”). And, in fact, there are instances where the Cincinnati City Council expressly authorized officers of the municipal corporation to authorize or direct the bringing actions on behalf of the municipal corporation without the need for further action by the Cincinnati City Council. *See, e.g., Cincinnati Municipal Code § 1501-27* (“[w]henever an officer charged with the enforcement of the Cincinnati Municipal Code is satisfied that a provision that officer is charged to enforce, or a law in force in the city applicable to the same subject matter, has been violated or is about to be violated, or that an order or direction made in pursuance of the enforcement of this Code has not been complied with, or is being disregarded, and whenever that officer is satisfied that civil proceedings are necessary for the enforcement of the Cincinnati Municipal Code or laws, to restrain or correct the violations thereof, that officer may apply to the city solicitor, who is authorized to institute civil proceedings. Civil proceedings may be brought in the name of the city”).

However, with respect to the lawsuit currently pending in the Hamilton County Common Pleas Court, styled *City of Cincinnati v. State of Ohio*, with Case No. A-19-02786, and challenging the enactment of Ohio Revised Code § 9.68, no legislative enactment by the Cincinnati City Council has authorized the filing of such an action. Because the exercise of such corporate powers can only be undertaken by and with the authority of the legislative body, *i.e.*, the Cincinnati City Council, and the Cincinnati City Council never authorized the filing of the subject lawsuit, its filing was *ultra vires* and constitutes an abuse of corporate powers.

Thus, as a taxpayer and resident in the City of Cincinnati, and pursuant to Ohio Revised Code §§ 733.56 to 733.61, I hereby request that you, as City Solicitor for the City of Cincinnati, make application, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers undertaken by the filing and prosecution of the lawsuit currently pending in the Hamilton County Common Pleas Court, styled *City of Cincinnati v. State of Ohio*, with Case No. A-19-02786.

Please let me know promptly if you will file make the requested application to a court of competent jurisdiction.

Sincerely,

A handwritten signature in dark ink, appearing to read "Th. E. Brinkman, Jr.", with a large, stylized flourish at the end.

Thomas E. Brinkman, Jr.

cc: Curt C. Hartman, Esq.

August 7, 2019

Tom Brinkman
3215 Hardisty Avenue
Cincinnati, OH 45208

Mr. Brinkman,

Thank you for your correspondence of July 19, 2019. I appreciate your concern over the proper exercise of municipal powers, but I disagree with your analysis.

You argue that the City Solicitor for the City of Cincinnati lacks authority to sue on behalf of the City of Cincinnati without the express authorization of Cincinnati City Council. Nothing in the Charter of the City of Cincinnati vests the power to sue with City Council. Rather, as you correctly note, Article IV, Section 5 of the Cincinnati City Charter provides that the City Solicitor "shall represent the city in all proceedings in court." Moreover, Article III, Section 2 of the Cincinnati Administrative Code provides, "The city solicitor shall be the legal advisor of the city government and of all of its agencies, and shall represent the city as attorney and counsel in all proceedings in which the city is a party before any court or any governmental commission having judicial power, and as such attorney may settle or compromise claims or suits at law or in equity to which the city may be party, either by judgment entry or otherwise." This means that City Council recognizes that the City Solicitor has the power to initiate, dismiss, or settle litigation on behalf of the City of Cincinnati. Moreover, Article II, Section 1 of the Cincinnati City Charter declares, "The laws of the state of Ohio not inconsistent with this charter, except those declared inoperative by ordinance of the council, shall have the force and effect of ordinances of the city of Cincinnati; *but in the event of conflict between any such law and any municipal ordinance or resolution the provisions of the ordinance or resolution shall prevail and control.*" (Emphasis added.) Your reference to Ohio Revised Code Sections 715.01-03 are not applicable.

Based on the foregoing, the decision to file a lawsuit in *City of Cincinnati v. State of Ohio* was a proper exercise of municipal power as provided by the Cincinnati City Charter and the Cincinnati Administrative Code. Accordingly, your request is denied.

Very truly yours,

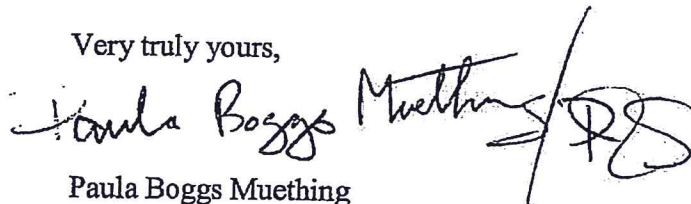

Paula Boggs Muething

Exhibit E